



July 10, 2015

Chairman Chris Dockery
Board of Commissioners, Lumpkin County
99 Courthouse Hill, Suite H
Dahlonega, GA 30533

Subject: PI #0009105, Lumpkin County, Entrance Corridor Beautification Project
Notice of Contract Termination – Items Needed for Continuation

Dear Chairman Dockery,

The subject project was selected in the 2008 call for Transportation Enhancement (TE) projects. The Notice to Proceed with Preliminary Engineering was issued October 15, 2009. The project approval dates are listed below:

- Concept Report Approval: June 29, 2012
- Environmental Approval: August 12, 2013
- Right of Way Certification: June 3, 2014
- Utility Certification: June 5, 2014
- Plan Approval: June 24, 2015
- Bid Document Approval: documents not received
- Construction Agreement Execution: August 18, 2014
- Maintenance Agreement Execution: agreement not received

In August 2014, the Department executed a construction agreement with Lumpkin County. We anticipated the County would obtain the appropriate approvals for the Department to issue the authority to advertise and award the project in a timely manner. As of the date of this letter the Department is not able to issue advertising authority. The following items require submission and approval: bid documents; mowing and maintenance agreements; and Title VI assurance documents. The Department has requested a schedule for submission of these items. To date, a schedule has not been provided.

Article XIV of the executed TE agreement allows the Department to terminate the agreement with or without cause upon a thirty (30) day written notice to the Sponsor. This letter is the 30 day written notice, the Department will terminate the TE construction agreement effective August 31, 2015. Terminating the construction contract does not cancel the project. When the County is ready to move forward, the Department will provide funds. The timeliness of the funds will be based on the priorities that exist at that time.

The Department requests Lumpkin County confirm a continued interest in the project by executing a new Memorandum of Understanding (MOU). Please note, this MOU requires a plans, specifications and estimate package submission by March 31, 2016. Meeting this submission date will allow consideration for FY2016 funding.

Please execute this MOU in triplicate: three identical packages with original signatures and seals. Return the completed documents to our program managers, Moreland Altobelli Associates, Inc., 2450 Commerce Ave, Ste 100, Duluth, Ga, 30096; Attn: Jeanne Kerney, P.E.

If you have any questions on the requirements for funding, please contact our program manager, Ms. Jeanne Kerney, P.E., 404-944-6433, or jkerney@dot.ga.gov. Thank you.

Sincerely,



Albert V. Shelby, III
State Program Delivery Engineer

AVS:JK

CC: Mr. Larry Reiter, Planning Director, Lumpkin County
Ms. Emily Dunn, State Transportation Board District 9
Ms. Jeanne Kerney, P.E., GDOT Project Manager

TRANSPORTATION ENHANCEMENT MEMORANDUM OF UNDERSTANDING

BETWEEN

Lumpkin County, hereinafter called the "SPONSOR", and the Georgia Department of Transportation, hereinafter called the "DEPARTMENT",

RELATIVE TO

The SPONSOR assuming responsibility for tasks associated with Preliminary Engineering for project number CSTEE-0009-00(105), hereinafter called the "PROJECT".

WHEREAS the DEPARTMENT and the SPONSOR signed a Memorandum of Understanding on October 15, 2009, and established a ready to bid date of October 15, 2011; and the project is currently not ready to bid.

WHEREAS the DEPARTMENT remains committed to providing the Federal-Aid funds provided the project is completed in a timely manner. The DEPARTMENT and SPONSOR are executing this MEMORANDUM OF UNDERSTANDING to validate the continued interest of both parties in executing project number CSTEE-0009-00(105)

WHEREAS the PROJECT is a Transportation Enhancement (TE) approved for Federal-Aid funds with a required local match of at least 20% of the PROJECT's Total Cost; and

I. IT IS THE INTENTION OF THE PARTIES:

That the SPONSOR fund 100% of the Preliminary Engineering for the PROJECT; and that the DEPARTMENT may apply said expenditure toward the SPONSOR'S local match of the PROJECT'S Total Cost, subject to the DEPARTMENT and the Federal Highway Administration's approval.

II. IT IS AGREED:

- A. That the SPONSOR certifies that local funds have been budgeted to undertake Preliminary Engineering for the PROJECT; and that an accounting system has been established to track project-specific Preliminary Engineering expenditures.
- B. That prior to construction of the PROJECT, the SPONSOR will certify, to the DEPARTMENT, the amount of eligible expended funds allowable toward the PROJECT'S Total Local Match.
- C. That if the PROJECT includes structures such as bridges or retaining walls, the SPONSOR will be required to use consultants pre-qualified with the DEPARTMENT.

III. IT IS AGREED:

- A. That construction funding will be dependent upon the SPONSOR receiving historical/environmental clearances through the DEPARTMENT; certifying existing or acquired Right-of-Way to the DEPARTMENT; producing a complete set of biddable construction plans meeting appropriate safety, access, and design standards; and preparing and forwarding construction bid procedures and documents for the DEPARTMENT'S review.
- B. That nothing contained herein shall obligate the DEPARTMENT to proceed with subsequent stages of the PROJECT.
- C. That the SPONSOR'S expenditure prior to execution of an Agreement with the DEPARTMENT for construction of the PROJECT shall be at the sole cost and risk to the SPONSOR. Should the SPONSOR or the DEPARTMENT determine that for any reason the PROJECT is unable to enter subsequent stages, the DEPARTMENT is not responsible for reimbursement of local funds expended on the PROJECT.

IV. The SPONSOR shall be responsible for all costs for the continual maintenance and the continual operations of the project, including any and all sidewalks and the grass strip between the curb and gutter and the sidewalk, within the PROJECT limits.

V. The SPONSOR shall Certify that they have read and understands the regulations for "CERTIFICATION OF COMPLIANCES WITH FEDERAL PROCUREMENT REQUIREMENTS, STATE AUDIT REQUIREMENTS, AND FEDERAL AUDIT REQUIREMENTS" as stated in attachment A of this AGREEMENT and will comply in full with said provisions.

VI. The SPONSOR shall accomplish all of the design activities for the PROJECT. The design activities shall be accomplished in accordance with the DEPARTMENT's Plan Development Process, the applicable guidelines of the American Association of State Highway and Transportation Officials, hereinafter referred to as "AASHTO", the DEPARTMENT's Standard Specifications Construction of Transportation Systems, 2013 Edition, the DEPARTMENT's Plan Presentation Guide, PROJECT schedules, and applicable guidelines of the DEPARTMENT. The SPONSOR's responsibility for design shall include, but is not limited to the following items:

- a. Prepare environmental studies, documentation, and reports for the PROJECT that show the PROJECT is in compliance with the provisions of the National Environmental Protection Act and Georgia Environmental Protection Act, as appropriate to the PROJECT funding. This shall include any and all archaeological, historical, ecological, air, noise, underground storage tanks (UST), and hazardous waste site studies required. The SPONSOR shall submit to the DEPARTMENT all environmental documents and reports for review and approval by the DEPARTMENT and the FHWA.
- b. Perform all work required to obtain project permits, including, but not limited to, US Army Corps of Engineers 404 and Federal Emergency Management Agency (FEMA) approvals. These efforts shall be coordinated with the DEPARTMENT.
- c. Prepare the PROJECT's drainage design including erosion control plans and the development of the hydraulic studies for the Federal Emergency Management Agency Floodways and acquisition of all necessary permits associated with the drainage design.
- d. Provide certification, by a Georgia Registered Professional Engineer, that the construction plans have been prepared under the guidance of the professional engineer and are in accordance with AASHTO and DEPARTMENT guidelines.

e. Failure of the SPONSOR to follow the DEPARTMENT's Plan Development Process will jeopardize the use of Federal funds in some or all of the categories outlined in this AGREEMENT, and it shall be the responsibility of the SPONSOR to make up the loss of that funding.

VII. All Primary Consultant firms hired by the SPONSOR to provide services on the PROJECT shall be prequalified with the DEPARTMENT in the appropriate area-classes.

VIII. The PROJECT construction and right of way plans shall be prepared in English units.

IX. The SPONSOR shall be responsible to perform all work required to obtain all applicable PROJECT permits, including, but not limited to, Cemetery, Tennessee Valley Authority (TVA) and US Army Corps of Engineers permits, Stream Buffer Variances and Federal Emergency Management Agency (FEMA) approvals. The SPONSOR shall provide all mitigation required for the project, including but not limited to permit related mitigation. All mitigation costs are considered PE costs. PROJECT permits and non-construction related mitigation must be obtained and completed 3 months prior to the scheduled let date. These efforts shall be coordinated with the DEPARTMENT.

X. The DEPARTMENT shall review and has approval authority for all aspects of the PROJECT. The DEPARTMENT will work with the FHWA to obtain all needed approvals with information furnished by the SPONSOR.

XI. The SPONSOR shall be responsible for the design of all structure(s) and preparation of any required hydraulic and hydrological studies within the limits of this PROJECT in accordance with the DEPARTMENT's policies and guidelines. The SPONSOR shall perform all necessary survey efforts in order to complete the design of the structure (s) and prepare any required hydraulic and hydrological studies. The final structure plans shall be incorporated into this PROJECT as a part of this AGREEMENT.

XII. The SPONSOR shall follow the DEPARTMENT's procedures for identification of existing and proposed utility facilities on the PROJECT. These procedures, in part, require all requests for existing, proposed, or relocated facilities to flow through the DEPARTMENT's Project Liaison and the District Utilities Engineer.

XIII. The SPONSOR shall address all railroad concerns, comments, and requirements to the satisfaction of the DEPARTMENT.

XIV. Upon the SPONSOR's determination of the rights of way required for the PROJECT and the approval of the right of way plans by the DEPARTMENT, the necessary rights of way for the PROJECT shall be acquired by the SPONSOR. Right of Way acquisition shall be in accordance with the law and the rules and regulations of the FHWA including, but not limited to, Title 23, United States Code; 23 CFR 710, et. seq., and 49 CFR Part 24, and the rules and regulations of the DEPARTMENT. Failure of the SPONSOR to follow these requirements may result in the loss of Federal funding for the PROJECT and it will be the responsibility of the SPONSOR to make up the loss of that funding. All required right of way shall be obtained and cleared of obstructions, including underground storage tanks, prior to advertising the PROJECT

for bids. The SPONSOR shall further be responsible for making all changes to the approved right of way plans, as deemed necessary by the DEPARTMENT, for whatever reason, as needed to purchase the right of way or to match actual conditions encountered. The SPONSOR shall be responsible for certifying the Right of Way.

XV. Upon completion and approval of the PROJECT plans and bid documents, the Department will authorize the SPONSOR to advertise the project for bids. The SPONSOR shall be solely responsible for advertising and awarding the construction contract (subject to the Department's recommendation) for the PROJECT.

XVI. The SPONSOR shall review and make recommendations concerning all shop drawings prior to submission to the DEPARTMENT. The DEPARTMENT shall have final authority concerning all shop drawings.

XVII. The SPONSOR shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on behalf of the SPONSOR pursuant to this AGREEMENT. The SPONSOR shall correct or revise, or cause to be corrected or revised, any errors or deficiencies in the designs, drawings, specifications, and other services furnished for this PROJECT. Failure by the SPONSOR to address the errors or deficiencies within 30 days shall cause the SPONSOR to assume all responsibility for construction delays caused by the errors and deficiencies. All revisions shall be coordinated with the DEPARTMENT prior to issuance. The SPONSOR shall also be responsible for any claim, damage, loss or expense that is attributable to negligent acts, errors, or omissions related to the designs, drawings, specifications, and other services furnished by or on behalf of the SPONSOR pursuant to this AGREEMENT.

XVIII. IT IS FURTHER AGREED that the SPONSOR shall be responsible for repayment of any expended federal funds if the PROJECT does not proceed forward to completion due to a lack of available funding in future PROJECT phases, changes in local priorities or cancellation of the PROJECT by the SPONSOR without concurrence by the DEPARTMENT, or if the SPONSOR is not compliant with Federal laws and regulations

XIX. Both the SPONSOR and the DEPARTMENT hereby acknowledge that time is of the essence. The Sponsor shall have the project ready to bid no later than June 30, 2019.

XX. This AGREEMENT is made and entered into in FULTON COUNTY, Georgia, and shall be governed and construed under the laws of the State of Georgia. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the DEPARTMENT and the SPONSOR have caused these presents to be executed under seal by their duly authorized representatives. The parties hereto have executed this Memorandum of Understanding, this _____ day of _____, 201__.

BY: _____
Commissioner

This Agreement approved by Lumpkin County
at a meeting held at

_____ this _____ day of _____, 201__.

ATTEST:

Treasurer

City/County Clerk (as appropriate)

FEIN: _____

(SPONSOR)

BY: _____
Name
Title

Signed, sealed and delivered this _____
day of _____, 201__, in the
presence of:

Witness

Notary Public

ATTACHMENT A

CERTIFICATION OF COMPLIANCES

I hereby certify that I am a principle and duly authorized representative of _____
whose address is _____ and it is also certified that:

I. PROCUREMENT REQUIREMENTS

The below listed provisions of Federal Procurement requirements shall be complied with throughout the contract period:

- (a) 49 CFR Part 18 Section 36
Uniform Administrative Requirements for Grants and Cooperative
Agreements to State and Local Governments – Procurement

- (b) 23 CFR 635 Subpart A – Contract Procedures

II. STATE AUDIT REQUIREMENT

The provisions of Section 36-81-7 of the Official Code of Georgia Annotated, relating to the “Requirement of Audits” shall be complied with throughout the contract period in full such that:

- (a) Each unit of local government having a population in excess of 1,500 persons or expenditures of \$ 300,000.00 or more shall provide for and cause to be made an annual audit of the financial affairs and transactions of all funds and activities of the local government for each fiscal year of the local government.
- (b) The governing authority of each local unit of government not included above shall provide for and cause to be made the audit required not less often than once every two fiscal years.
- (c) The governing authority of each local unit of government having expenditures of less than \$ 300,000.00 in that government’s most recently ended fiscal year may elect to provide for and cause to be made, in lieu of the biennial audit, an annual report of agreed upon procedures for that fiscal year.
- (d) A copy of the report and any comments made by the state auditor shall be maintained as a public record for public inspection during the regular working hours at the principal office of the local government. Those units of local government not having a principal office shall provide a notification to the public as to the location of and times during which the public may inspect the report.

- (e) The audits of each local government shall be conducted in accordance with generally accepted government auditing standards.

III. FEDERAL AUDIT REQUIREMENT

The provisions of OMB Circular A-133 issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 shall be complied with throughout the contract period in full such that:

- (a) Non-Federal entities that expend \$ 300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133.
- (b) Non-Federal entities that expend less than \$ 300,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
- (c) Except for the provisions for biennial audits provided in paragraphs (1) and (2) below, audits required shall be performed annually. Any biennial audit shall cover both years within the biennial period.
 - (1) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. This requirement must still be in effect for the biennial period under audit.
 - (2) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially.
- (d) The audit shall be conducted in accordance with Generally Accepted Government Auditing Standards.

Date

Signature



GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

Contract No. and Name: PI 0009105, Lumpkin County, Entrance
Corridor Beautification Project

Name of Contracting Entity: Lumpkin County

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the Georgia Department of Transportation has registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify*, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the Georgia Department of Transportation at the time the subcontractor(s) is retained to perform such service.

EEV / E-Verify™ User Identification Number

Date of Authorization

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

____ DAY OF _____, 201__

[NOTARY SEAL]

Notary Public

My Commission Expires: _____

* or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603